

Courtroom Conduct and the Top 10 Mistakes

**By Hon. Steven E. Martin
Hamilton County Court of Common Pleas**

This CLE will focus on the top 10 mistakes that lawyers make in the courtroom.

1. Be Prepared! Need I say more?
2. Be Civil. Assume that at some point I will read your emails with opposing counsel. Watch what you say. When you come to Court requesting relief or opposing something, if you have not been professional or have been abusive, it will not help your case.
3. Rarely, if ever, tell a jury, or most judges for that matter, that your case is complicated. Distill your case down to its very essence which is a brief (30 seconds or less) explanation as to why your client should prevail.
4. Proffer your testimony and exhibits that were excluded by the judge during the trial or hearing. If you do not get it into the record, the Court of appeals cannot review it.
5. Submit your jury instructions in advance. If you are going to deviate from the Ohio Jury Instructions, be ready with a case from our appellate district or the Ohio Supreme Court that permits, or better yet requires, such an instruction.
6. If you are challenging the competence of an expert or any other witness to testify, please make that motion in advance of trial. I will allow you to voir dire the witness or submit prior testimony to build your record. However, keep in mind that most such challenges go to weight, and not admissibility, of the evidence.
7. If you are using demonstrative exhibits, especially in a large courtroom, get them close to the jury. Jurors will tell you they cannot hear before they tell you they cannot see.
8. If you are going to surprise your opponent with motions, keep in mind you are also surprising the judge. The odds of a correct decision on your motion, if that in fact favors your case, increases with the amount of time a judge has to consider it.
9. When you file a motion, please notify the courtroom. The Clerk of Courts does not tell me when a motion has been filed in one of the cases assigned to me. This applies to any responsive pleading as well. Try and get me a hard copy of your pleading. I work weekends and may do it where there is no internet, so I need hard copies.
10. Be yourself. Jurors will see through a phony and it will not help your client. We have very successful trial attorneys who are of every personality type.